IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 520 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NATIONAL INSURANCE CO LTD - Appellant(s)
Versus
JIVRAJBHAI NARSIBHAI PATEL & 5 - Defendant(s)

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Appearance :
MR SUNIL PARIKH for Appellant(s) : 1,
None for Defendant(s) : 1,3 - 6.
MR SANDIP C SHAH for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Surendranagar passed in M.A.C.P. No.224 of 1983 dated 13.01.1987.

2.0 The brief facts of the case are that on 11.04.1983, when the deceased Salim Mamadbhai Makrani was traveling as cleaner in the truck

bearing No. GTX 4777 , the said truck went turtle near Limbdi and on account of the said accident, deceased received serious bodily injuries and expired. Therefore, present opponent No.4 being heir and legal representative of the deceased filed a petition claiming an amount of Rs.80,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard, learned Counsel for the parties. It is not in dispute that the deceased lost his life on account of the accident caused by a truck bearing No. GTX 4777. The issue in question in this appeal is that as to who was the owner and insurer of the offending vehicle on the relevant date. Opponent No.1 in his deposition Exh.48 has stated that the offending vehicle belonged to the Rajdeep Roadways, a partnership firm of which he was one of the partner. The said vehicle was

purchased by them taking loan from Nagrik Sahakari Bank, Rajkot under hire-purchase agreement. He has further stated that the said truck was sold in a Court sale dated 01.09.1982 to opponent No.3. It may be noted that since the dues of the Nagrik Sahakari Bank were not paid by the opponent No.1, though, the possession of the vehicle was taken by the opponent No.3, the same could not be transferred in the name of opponent No.3 and the vehicle stood registered in the name of opponent No.1. The story narrated by opponent No.1 is supported by Exh.76 by which a Commissioner was appointed to take possession of the vehicle in question to sale the same through Court sale, Exh.77 i.e. copy of the report of the Court Commissioner and Exh.80 is the copy of the Sale Certificate issued in favour of opponent No.3. The Tribunal, therefore, came to the conclusion that since opponent No.3 was in the possession of the offending vehicle which was insured by the present appellant, they are liable to satisfy the claim.

3.1 As regards the contention of the learned Advocate for the appellant that since the insurance policy of the offending vehicle was taken by suppressing material fact that M/s. Rajdeep Roadways was not the owner of the offending vehicle is concerned, it would be relevant to refer to a decision of this Court passed in the case of ***"United india Fire & General Insurance Company Limited"*** reported in 1993 ACJ 838 wherein it was held that under Sections 95 and 96 (2)(c) of the Motor Vehicles Act, 1939 [section 147 and 149(2) (b) of 1988 Act]in case of suppression of material fact on the part of the owner while taking policy, the insurance company is not liable to satisfy the claim. Hence, in view of the suppression of material fact by opponent No.3 that M/s. Rajdeep Roadways was not the owner of the vehicle in question, the Tribunal has committed an error by holding it liable to satisfy the claim.

3.2 As regards the contention of the Learned

Advocate for the opponent No.2 that their liability would be limited under the provisions of Workmen's Compensation Act since the deceased was working as cleaner on the said truck is concerned, it would be relevant to refer to a decision of this Court passed in the case of ***"Ramashray Singh Vs. New India Assurance Co. Ltd. And Others"*** reported in (2003)10 SCC 664 wherein it was observed that under Section 147(1)(b) proviso and Section 146 of the Motor Vehicles Act, 1988 the expression 'Third Party Risk' as specified in sub-clauses (i) and (ii) of Section 147(1)(b) covers only a driver, a conductor or an examiner of tickets and no other employee such as cleaner(khalasi), and mere fact of insurance policy specifying that insurance had been paid by the appellant owner for "seating capacity including driver and cleaner" (13 passengers + 1 driver)does not meant that cleaner could be included as passenger for imposing liability on the Insurance Company. Therefore, the liability of the opponent No.2 would be limited under the

Workmen's Compensation Act which comes to Rs.19,200/-.

4.0 In the result, the appeal is allowed. The amount deposited by the appellant, if not withdrawn by the original claimants, will be refunded to it. If the same has, already, been withdrawn by the original claimants, the opponent No.2 will recover it from the opponent No.1-owner and shall reimburse the same to the appellant. The liability of the opponent No.2 in respect of the original claimants will be limited to the extent of Rs.19,200/-.

(K.S. Jhaveri,J.)

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